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Patent
Attorney Docket No. 033558-004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)
Christopher B. HEWETT)
, Application No. 09/883,893) Group Art Unit: 3653
Filed: June 18, 2001) Examiner: Michael E. Butler
For: TISSUE DISPENSER) Confirmation No. 2534

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3-23-04

APPEAL BRIEF

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Sir:

This appeal is from the decision of the Primary Examiner dated July 31, 2003 (Paper No. 14), finally rejecting claims 40-47 and 54, which are reproduced as an Exhibit to this brief.

A check covering the [] \$165.00 (2402) [] \$330.00 (1402) Government fee and two extra copies of this brief are being filed herewith.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. A copy of this page and the signature page are submitted in duplicate.

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1. Real Party in Interest - the inventor, Christopher B. Hewett.
2. Related appeals and Interferences - none.
3. Status of Claims

All pending claims 40-47 and 54 stand rejected as unpatentable over the prior art.

4. Status of Amendments

There are no unentered amendments.

5. Summary of Invention

The presently claimed invention relates to a method of providing tissues in a shower stall. Basically the method involves the provision of a tissue dispenser having separate tissue dispenser and disposal stations, and mounting the dispenser at the shower stall above floor level. A representative showing of a thus-mounted dispenser is provided in Fig. 1 of the application, with the dispenser being designated by reference numeral 10.

A number of embodiments of the invention are disclosed in the application. Representative of the embodiments is that of Fig. 3 wherein the tissue disposal station 15 overlies the tissue dispenser station 16. The tissue dispenser station 16 has a downwardly facing tissue dispensing orifice for dispensing tissues 30, and the tissue disposal station 15 has an upwardly facing tissue disposing orifice 40. The dispenser is mounted above floor level, e.g., to a vertical wall by adhesive or to a shower rod by an elongated cord.

Such a method enables a user of the shower to effectively cleanse his/her nasal passages of mucus while in the shower, because there the mucus is looser and easier to expel than in dry areas of the bathroom.

6. Issues

At issue is whether:

claims 40-45 and 54 are obvious under 35 U.S.C. §103 over Yates (U.S. Patent No. 3,095,087) in view of Wilson (U.S. Patent No. 3,095,087);

claims 40, 44, 46 and 47 are obvious under 35 U.S.C. §103 as obvious over Cole (U.S. Patent No. 3,089,586) in view of Wilson;

claim 40 is obvious under 35 U.S.C. § 103 as obvious over Harsanyi, Jr. et al. in view of Wilson.

8. Grouping of Claims

Claims 40-47 stand or fall together. Claim 54 is independently patentable over claims 40-47.

9. Argument

Claims 40-45 and 54 stand finally rejected as obvious over Yates in view of Wilson for reasons set forth in Section No. 20 of the final rejection.

Claims 40, 44, 46, and 47 stand finally rejected as obvious over Cole in view of Wilson for reasons set forth in Section No. 21 of the official action.

Claim 40 stands finally rejected as obvious over Harsanyi, Jr. et al. in view of Wilson for reasons set forth in Section No. 22 of the official action.

No other rejections of claims 40-47 and 54 have been made in the final rejection.

Claim 40

Each of the base references to Yates, Cole and Harsanyi, Jr. et al. discloses a combination tissue dispensing and tissue disposal container. Concerning claim 40, the issue is whether it would have been obvious in view of Wilson to mount any of those containers above floor level at a shower stall as recited in claim 40.

Wilson's invention relates to a bathroom "fixture", i.e., a soap holder or toilet tissue dispenser, which is water resistant (see col. 1, lines 7-9). Due to traditional bathroom design, permanent fixtures such as soap dispenser fixtures and toilet

tissue dispenser fixtures are typically fixed at locations where they are susceptible to being splashed by water from a shower or bathtub. That is, a soap holder fixture needs to be located in convenient reach of an occupant of a tub or shower stall, whereas the location of a toilet tissue dispenser fixture is basically dictated by the location of the toilet. The problem with which Wilson deals is a tendency for soap and/or toilet tissue to become splashed with water if the soap fixture or the toilet tissue dispenser is located close to a tub or shower stall. In order to keep the soap and toilet tissue dry, Wilson proposes a cover 20 for the soap fixture or the toilet tissue dispenser.

In contrast, Yates, Cole and Harsanyi, Jr. et al. do not relate to a "fixture" but rather relate to a portable tissue dispenser that can be placed virtually anywhere. That is, they do not relate to a toilet tissue fixture, but rather to a portable facial tissue dispenser.

Due to problems resulting from facial tissues getting wet, a user would naturally tend to locate the dispenser of Yates, Cole or Harsanyi, Jr. et al. far enough from the tub or shower stall to avoid splashes. Wilson's disclosure is not inconsistent with such a tendency. That is, Wilson does not encourage or even suggest the positioning of the Yates or Cole or Harsanyi, Jr. et al. tissue dispenser near the tub or shower stall. Wilson is dealing with fixtures that cannot be moved, and whose fixed locations often cause the soap or toilet tissue to be splashed. Wilson's invention is premised upon keeping soap or toilet tissue dry. Thus, the message that anyone would glean from Wilson is to keep tissues away from (not at) the tub or shower stall, if at all possible and to resort to using Wilson's cover only if it is not possible to keep the tissues away from the stall or tub (as in the case of fixtures). But Yates, Cole and Harsanyi, Jr. et al. disclose portable tissue dispensers that can be kept away from the tub or stall and that is what a person would tend to do. There is nothing to the contrary in Wilson's disclosure. In sum, Wilson cannot be considered as motivating an artisan to position a portable dispenser at a shower stall.

Accordingly, it is submitted that the final rejection of claims 40-47 and 54 as obvious over Yates in view of Wilson, or Cole in view of Wilson, or Harsanyi, Jr. et al. in view of Wilson be withdrawn for the reasons discussed above.

Claim 54

Claim 54 is patentable for additional reasons. That claim, which depends from claim 40, stands finally rejected solely over Yates in view of Wilson. Claim 54 recites, *inter alia*, adhering the dispenser to a vertical wall by a fastener disposed on a rear portion of the dispenser. The description of the patent application describes adhesive as a fastener, but alternatively, other expedients (such as a suction cup disposed on the rear portion of the dispenser) could be used as a fastener. In Section No. 20 of the final rejection, it is asserted that it would have been obvious for Yates to attach the tissue dispenser to a shower stall in view of Wilson.

The comments made above concerning the lack of a teaching from Wilson of mounting a tissue dispenser at a shower stall are applicable to claim 54. Moreover, it is pointed out that Yates discloses that his dispenser is formed of a semi-rigid material such as cardboard (col. 2, lines 1-2). It is unlikely that a user would ever mount a cardboard container at a shower stall since it could be ruined by excessive moisture.

Additionally, it is noted that it would not have been obvious to mount Yates' cardboard dispenser to a wall in view of Wilson, because Wilson relates to a fixed dispenser that is screwed to a wall. Yates' cardboard dispenser is not permanent and it would not have been obvious to fix it to a wall by screws.

Accordingly, the rejection of claim 54 should be withdrawn.

Attention is directed to the fact that in the rejection based upon Harsanyi, Jr. et al. in view of Wilson (Section No. 22 of the official action), claim 54 is not listed at the beginning of Section No. 22 as being among the claims being rejected. However, claim 54 is mentioned later in Section No. 22, where it is asserted that it would have been obvious to mount the dispenser of Cole (not

Harsanyi, Jr. et al.) with a fastener. However, in the rejection based upon Cole in view of Wilson (made in Section No. 21), claim 54 is not mentioned. Despite the confusion, Harsanyi, Jr. et al. and Cole will be discussed below with all regard to claim 54 (which depends from claim 40). The dispenser of Harsanyi, Jr. et al. does not have a tissue disposal station as recited in base claim 40. Rather, it has a station 20 for moistened towelettes, and a station 20 for dry towelettes (col. 4, lines 28-41). Presumably, Harsanyi, Jr. et al. intends that used towelettes are to be discarded into a standard trash receptacle (not shown). Moreover, the dispenser of Harsanyi, Jr. et al. is portable and has a carrying handle 18, so it would not have been obvious to screw such a portable dispenser to a wall.

As regards the dispenser disclosed in Cole, that dispenser does not have a downwardly facing disposing orifice as recited in claim 54. Cole's dispensing orifice 12 faces horizontally and would not shield tissues from the splashing occurring at a shower stall.

In view of the arguments presented above, it is submitted that the final rejection of claims 40-47 and 54 should be withdrawn.

Respectfully submitted,

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EXHIBIT

HEWETT U. S. Serial No. 09/883,893
Reproduced Finally Rejected Claims 40-47 and 54

40. A method of providing tissues in a shower stall comprising the steps of:

A) providing a tissue dispenser having a tissue dispenser station containing tissues to be dispensed, and a tissue disposal station for receiving used tissues, the tissue dispenser station separated from the tissue disposal station by a wall and having a tissue dispensing orifice, the tissue disposal station having a tissue disposing orifice; and

B) mounting the tissue dispenser at the shower stall above floor level.

41. The method according to claim 40 wherein step B comprises mounting the dispenser with the tissue dispensing orifice facing downwardly.

42. The method according to claim 41 wherein step B comprises mounting the dispenser with the tissue disposing orifice facing upwardly.

43. The method according to claim 40 wherein step B comprises mounting the dispenser with the tissue dispensing orifice and the tissue disposing orifice facing in mutually opposite directions.

44. The method according to claim 40 wherein step B comprises mounting the dispenser with the tissue disposal station and the tissue dispenser station disposed one above the other.

45. The method according to claim 44 wherein the tissue disposal station overlies the tissue dispensing station.

46. The method according to claim 40 wherein step B comprises adhering the dispenser to a vertical wall by a fastener disposed on a rear portion of the dispenser.

HEWETT U. S. Serial No. 09/883,893
Reproduced Claims 40-47 and 54

47. The method according to claim 40 wherein step B comprises suspending the dispenser from a support by an elongated element.

54. The method according to claim 40 wherein step B comprises mounting the dispenser with the tissue disposal station overlying the tissue dispenser station, and with the tissue dispensing orifice facing downwardly and the tissue disposing orifice facing upwardly; step B also comprising adhering the dispenser to a vertical wall by a fastener disposed on a rear portion of the dispenser.